

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
MARTINSBURG**

**DONALD BROWN,**

Plaintiff,

v.

**CIVIL ACTION NO. 3:07-CV-61  
(BAILEY)**

**JAMES SPENCER,  
CHARLES MIDCAP,  
JOSEPH STOCKLASK,  
ROY WOODS, Jr.,**

Defendants.

**ORDER ADOPTING REPORT AND RECOMMENDATION**

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge James E. Seibert. By Standing Order entered on March 24, 2000, this action was referred to Magistrate Judge Seibert for submission of a proposed report and a recommendation ("R & R"). Magistrate Judge Seibert filed his R & R on September 26, 2008 [Doc. 28]. In that filing, the magistrate judge recommended that this Court deny the plaintiff's Complaint [Doc. 1] under 42 U.S.C. § 1983.

Pursuant to 28 U.S.C. § 636 (b) (1) (c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. ***Thomas v. Arn***, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1);

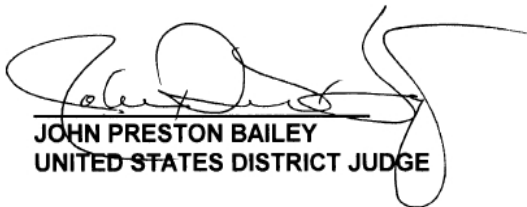
**Snyder v. Ridenour**, 889 F.2d 1363, 1366 (4th Cir. 1989); **United States v. Schronce**, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Seibert's R & R were due within ten (10) days after being served with a copy of the R & R pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b). The docket reflects that service was accepted on September 30, 2008. To date, neither party has filed objections. Accordingly, this Court will review the report and recommendation for clear error.

Having reviewed the record and the magistrate judge's R & R, it is the opinion of this Court that the recommendations of Magistrate Judge Seibert **[Doc. 28]** should be, and are, hereby **ORDERED ADOPTED**. Accordingly, the Court **GRANTS** the defendants' First Motion to Dismiss, or in the alternative, Motion for Summary Judgment **[Doc. 24]** and **DISMISSES with prejudice** the plaintiff's Complaint **[Doc. 1]**. Accordingly, this action is hereby **ORDERED STRICKEN** from the active docket of this Court.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record, and to mail a copy to the *pro se* plaintiff.

**DATED:** October 29, 2008.

  
JOHN PRESTON BAILEY  
UNITED STATES DISTRICT JUDGE